


 **Polzer, Stephen (Vol. 01) - 01/18/2005**

1 CLIP (RUNNING 00:49:45.033)

 **JURY TRIAL - DAY 9 SEPTEMBER 25, 2006**

POLZER2

53 SEGMENTS (RUNNING 00:49:45.033)

1. PAGE 8:13 TO 9:16 (RUNNING 00:01:14.100)

13 Q. Was this a promotion?
14 A. I believe it was.
15 Q. Do you get an increase in your pay?
16 A. Yes, I did.
17 Q. Mr. Hellowell was the first one that spoke
18 to you about this position?
19 A. He would have been one of many who did.
20 Q. Well, who was the first person that spoke
21 to you?
22 A. I wouldn't know who the first person was.
23 I mean, it was well-known that the position had been
24 vacant for three, four, or five months, and they
00009:01 were having trouble finding somebody to take it. It
02 very well could have been Gordon who was the first
03 person, and asked if I would be interested in coming
04 back.
05 Q. Did Mr. Flaherty raise the issue with you?
06 A. Only after I told him I was considering
07 it.
08 Q. I take it, that -- let me ask you, was
09 this move a voluntary move on your part, as opposed
10 to being formally transferred by the company?
11 A. Absolutely.
12 Q. You didn't have to take this move?
13 A. No, I did not.
14 Q. Could you have stayed in your current
15 position in Allentown?
16 A. Yes, I could.

2. PAGE 13:08 TO 13:11 (RUNNING 00:00:12.000)

08 Q. Was the fact that you would no longer be
09 involved in the sales assistance process part of the
10 reason why you were interested in the new job?
11 A. No, I wouldn't say that.

3. PAGE 13:19 TO 13:24 (RUNNING 00:00:18.800)

19 Q. Were you burnt out with the whole sales
20 assistance process?
21 A. I would not say I was burnt out with the
22 sales assistance process. I maybe was burned out
23 with the overall demand of the director of
24 commercial administrative function.

4. PAGE 14:14 TO 14:17 (RUNNING 00:00:09.000)

14 Q. So that in your testimony here, today that
15 was just a neutral factor, the fact that you would
16 no longer be involved in sales assistance?
17 A. I would agree with that.

5. PAGE 33:01 TO 33:16 (RUNNING 00:00:56.100)

00033:01 Q. Now, at your last deposition, you told us

02 that at one point in time you were asked by Mr.
03 Yelles to sit on the sales assistance request for a
04 company -- I think it was Parrish Leasing -- over a
05 weekend. Do you remember that?

06 A. That's correct.

07 Q. And were you ever asked by any other
08 regional vice president to sit on or delay sales
09 assistance requests?

10 A. None that I can remember.

11 Q. And I believe you complied with Mr.
12 Yelles' request in that instance, right?

13 A. That is correct.

14 Q. And I believe you told me at your last
15 deposition that that was something that -- a mistake
16 that you made, correct?

6. PAGE 33:21 TO 34:16 (RUNNING 00:01:21.900)

21 Q. Let me ask you, was that a mistake, as you
22 look back on it?

23 A. I think the exact word was, was that a
24 legitimate reason to delay the sales assistance?
00034:01 And I agreed that it was probably not a legitimate
02 reason. It was not a legitimate reason.

03 Q. Had you ever delayed any other sales
04 assistance for -- on a deal at the request of a
05 regional vice president or district manager?

06 A. I cannot recall anything.

07 Q. That instance that we talked about with
08 Parrish Leasing was not consistent with Mack's
09 practice, right?

10 A. I do not believe it was a legitimate
11 reason to delay the sales assistance.

12 Q. If a regional vice president had come to
13 you and said, Please delay sales assistance on this
14 deal because one of my dealers is real close to
15 closing it, under Mack's practice you should not
16 have delayed the sales assistance, right?

7. PAGE 34:18 TO 34:24 (RUNNING 00:00:22.900)

18 THE WITNESS: If I was -- if I
19 would have been in a position to have
20 acted on that sales assistance request,
21 meaning, I was at work that day, that was
22 one of the functions that I had the time
23 to work on that day? No, that should not
24 have been a legitimate reason.

8. PAGE 52:17 TO 53:15 (RUNNING 00:01:04.100)

17 Q. Were there different fixed costs that you
18 are aware of?

19 A. I would need a better understanding of the
20 engineering costs that were part of the burden
21 piece. If you had a customer who bought the same
22 truck and 100 of them, obviously, there is a much
23 smaller engineering cost associated with having to
24 make that truck up one time over a hundred trucks
00053:01 than somebody -- than the engineering cost making
02 101 -- 100 individual trucks. So, I am not saying I
03 totally understand how the engineering component of
04 the burden is calculated.

05 Q. You are not sure about that?

06 A. I', not sure about that.
07 Q. One way or the other?
08 A. Correct.
09 Q. Who would have -- who would we have to ask
10 about that?
11 A. There is an industrial accounting group.
12 Q. What is that group called?
13 A. I believe each of the plants have their
14 own costs. I honestly don't know their official
15 name.

9. PAGE 70:15 TO 70:24 (RUNNING 00:00:42.000)

15 Q. Mr. Polzer, Exhibit-4 is a document, Mack
16 Trucks Business Plan 2004/2006. It says, "Issued to
17 Stephen Polzer." Did you receive this?
18 A. I have a copy of this, yes.
19 Q. What is this?
20 A. I believe you will find this is the three
21 year business plan for Mack Trucks.
22 Q. A limited number of people received this,
23 right?
24 A. That is correct.

10. PAGE 77:03 TO 77:09 (RUNNING 00:00:22.000)

03 Q. What was your understanding of what this
04 document was, sir?
05 A. My -- my understanding?
06 Q. I'm asking you, not Mr. Heap.
07 A. No. I realize that. I guess I just
08 decided to look at him.
09 Q. Okay.

11. PAGE 77:15 TO 78:24 (RUNNING 00:01:47.000)

15 Q. What was your understanding of what this
16 document was, if any?
17 A. My understanding is this was more for, I
18 will call it, the senior management of the company
19 of where we were headed.
20 Q. Go to the page MW0018404. Now, this is
21 Mr. Flaherty's handwriting, right?
22 A. Um-hmm.
23 Q. Yes?
24 A. I believe this is Mr. Flaherty's
00078:01 handwriting.
02 Q. And this is a section called Functional
03 Strategies. And I see down there at the bottom Mr.
04 Flaherty wrote your name?
05 A. That is correct.
06 Q. Besides Price Increases?
07 A. Excuse me? What was that?
08 Q. Beside the heading Price Increases Would
09 Be Supported By?
10 A. Correct.
11 Q. Was it part -- do you know what that
12 refers to there, the price increase part? Is that
13 something you reviewed?
14 A. I definitely read this section.
15 Q. Okay. And were you charged or responsible
16 for attempting to get price increases, as part of
17 Mack's business plan?
18 A. I -- yes.

19 Q. Okay. And that was part of the company's
20 strategy in 2004?

21 A. Yes.

22 Q. Okay. And was Mack successful in getting
23 price increases in 2004?

24 A. I believe we were.

12. PAGE 79:17 TO 80:10 (RUNNING 00:00:54.400)

17 Q. Did you balance volume product mix and
18 margin to ensure profitable growth?

19 A. I really did not have much control over
20 that. I think this gets back to what were the -- as
21 we stated earlier, the vocational product is more
22 profitable than the highway segment.

23 Q. Were you able to get price increases in
24 the vocational segment?

00080:01 A. Yes.

02 Q. And were you able to get larger price
03 increases in the vocational segments than you were
04 in the highway segment?

05 A. I believe the reports will show, yes, we
06 did.

07 Q. And is that because -- or why were you
08 able to get larger price increases in the vocational
09 segment than the highway segment?

10 A. Are you asking for my opinion?

13. PAGE 80:15 TO 81:01 (RUNNING 00:00:39.800)

15 Q. Yes, sir.

16 A. I don't know that I can say. I mean, I
17 have an understanding of why I think that happened.

18 Q. Well, give me your understanding of why
19 you think that happened?

20 A. The acceptance, the equality of the Mack
21 vocational product was very, very good.

22 Particularly, the new Granite model product. And,
23 unfortunately, the quality of the highway segment
24 product was perceived, I believe, by the customer

00081:01 base to be deteriorating.

14. PAGE 93:23 TO 95:09 (RUNNING 00:01:17.400)

23 Q. Well, if it was a combiner Mack
24 Freightliner dealer, isn't that a competitive
00094:01 situation?

02 A. I should have answered, I don't believe
03 there is such a thing.

04 Q. Any more?

05 A. If -- I -- if there was one, I don't
06 believe there is anymore.

07 Q. Well, there is certainly Mack Peterbilt
08 dealer and Mack Kenworth dealers?

09 A. I am aware that there may be one or two of
10 them.

11 Q. Would you take that into consideration?

12 A. I believe I would be relying on the DM and
13 the RVP who have the local knowledge of that for
14 their advice in something like that. That would
15 have been one of the factors in the sales assistance
16 request to consider.

17 MR. HEEPS: Just to be clear,
18 you are asking just generally whether it's

19 a dual dealer as opposed to whether he had
 20 knowledge that there was actual
 21 competition from the competitors, whether
 22 it be Peterbilt or anyone else in a
 23 particular --

24 MR. MACK: I am on the ladder --
 00095:01 because he said if it's a dual dealer he
 02 didn't mind. Now I am asking him if its
 03 competition, would that be relevant?

04 THE WITNESS: I don't know if I
 05 would say it didn't mind. If I give you
 06 that -- competition was definitely a
 07 major -- a big factor in determining where
 08 a sales assistance level should be.
 09 - - -

15. PAGE 98:10 TO 98:14 (RUNNING 00:00:11.300)

10 Q. Mr. Polzer, I have handed you a document
 11 marked as Exhibit-5. It has your name on it,
 12 business plan update May 14, 2004. Did you prepare
 13 this?
 14 A. Yes, I did.

16. PAGE 101:13 TO 102:16 (RUNNING 00:01:35.000)

13 Q. Okay. What are the data entry points
 14 there on that graft you prepared?

15 A. This is a financial index that the finance
 16 department prepared from monthly data that tried to
 17 measure the relative movement in the price of a
 18 truck.

19 Q. What is 106 -- the last point is 106.9.
 20 What is 106.9 what?

21 A. That is telling me -- that if you look
 22 back to J02, which is the first point, at 100, at
 23 that time period, I guess that is January of '02.
 24 Where we -- more or less that was the baseline. We
 00102:01 are saying that for just the price side of the
 02 truck, we believe we are now receiving 106.9.

03 Q. So a 6.9 percent increase?

04 A. Yes.

05 Q. 6.9. increase?

06 A. You could say if we were getting a hundred
 07 thousand dollars on that same truck we were now
 08 getting a hundred and six point nine, a hundred and
 09 six, nine hundred.

10 Q. And the -- you used January '02 as the
 11 base point?

12 A. That was the base point.

13 Q. So this chart showed that your price
 14 increased efforts were working, right, on deals less
 15 than ten?

16 A. More or less, yes.

17. PAGE 108:08 TO 108:12 (RUNNING 00:00:20.700)

08 Q. And the Mack margins, if we look at the
 09 third page, on -- on sales to the dealers for
 10 customers who bought more than ten truck in the
 11 Refuse segment are much higher than the margins in
 12 the other segments, right?

18. PAGE 108:24 TO 109:11 (RUNNING 00:00:40.400)

24 Q. 10021. Look at that Refuse margins.
00109:01 A. Okay.
02 Q. Those margins are the highest than any of
03 the other segments, right?
04 A. For one particular model, I would agree,
05 yes. The MR.
06 Q. And the average margin for the LE and the
07 MR are greater than the average margin for any of
08 the other segments, right?
09 A. That is correct.
10 Q. And is that because of the customer
11 presence for that model -- those models?

19. PAGE 109:14 TO 109:18 (RUNNING 00:00:04.000)

14 THE WITNESS: I believe that is
15 one of the factors.
16 - - -
17 BY MR. MACK:
18 Q. Can you think of any other factors?

20. PAGE 109:21 TO 109:22 (RUNNING 00:00:06.100)

21 THE WITNESS: There is just an
22 acceptance of the Mack refuse product.

21. PAGE 115:20 TO 116:04 (RUNNING 00:00:27.000)

20 Q. If we look at the vocational price
21 improvement actions in the past, on deals that were
22 for customers that were less than ten trucks there
23 was no model year price protection window. And for
24 dealers that sold to customers that bought more than
00116:01 ten trucks in National Accounts, there was price
02 protection on sold orders placed by January 16,
03 right?
04 A. That is what it says.

22. PAGE 116:08 TO 117:01 (RUNNING 00:01:15.800)

08 Q. Why was there price protection offered to
09 customers who purchased -- customers of dealers who
10 purchased more than ten trucks and no price
11 protection offered to dealers who sold to customers
12 who purchased less than ten trucks?
13 A. We felt that the market for the vocational
14 product was strong enough that we should be able to
15 obtain price increases on all new model vocational
16 trucks that were ordered. However, we did recognize
17 in January, which is about the time we probably
18 announced when the new -- and I don't have the
19 specific date -- when the new model year would take
20 place, that there were already deals on order that
21 the customer had quoted that end price -- excuse me.
22 The dealer had quoted the end price to the customer
23 that we did not feel it was fair for the dealer to
24 have to go back and say, Oh, by the way, now you
00117:01 have to pay me more money.

23. PAGE 146:24 TO 149:13 (RUNNING 00:03:12.300)

24 Q. Before these accounts converted to --
00147:01 maybe we can get a date. At some point in time Mack
02 stopped selling to the body builders direct, right?

03 A. Just recently?
 04 Q. Yes.
 05 A. We transitioned them to be sold to a
 06 dealer. That is correct.
 07 Q. And that was while you were still at Mack,
 08 right?
 09 A. That is correct.
 10 Q. Sometime in early 2004, right?
 11 A. That's correct.
 12 Q. Prior to that time frame, okay, were
 13 dealers equalized with the discount given to
 14 McClain?
 15 A. In which situation? If the dealers wanted
 16 to sell to McClain direct or a different end user?
 17 Q. Either situation?
 18 A. So okay. Which one do we want to tell
 19 about first?
 20 Q. Why don't you give me the dealers who want
 21 to do sell to a different end user first and they
 22 said I am competing with McClain?
 23 A. That is where a dealer had a -- whatever
 24 the third party end user was, he wanted to sell a
 00148:01 truck and part of his -- part of his comments to me
 02 were either I believe McNielus or McClain will also
 03 be competing for the sale to this end user. Or they
 04 used the standard -- it didn't sound like they were
 05 competing. They just said we want to equalize to
 06 any existing body builder dealer whatever?
 07 Q. Yes.
 08 A. I mean, that is a different situation
 09 there. They weren't saying they were competing.
 10 They were just using some standard terminology that
 11 I guess they thought would have meant something.
 12 In my opinion -- as I said, in
 13 my opinion, one of the factors that I would have
 14 looked at or considered was, was there in fact a
 15 situation where McClain would be invoicing -- or
 16 excuse me -- McClain would be quoting that third
 17 party end user versus was the dealer also quoting
 18 that third party?
 19 Q. Okay. What was your practice in that
 20 situation?
 21 A. I -- my -- I would look at, as I said, the
 22 factors. I would look at who the third party end
 23 user was. Did I have any knowledge that McClain had
 24 previously sold to that third party end user, that,
 00149:01 in fact, it was logical that they were also -- they
 02 would be selling again.
 03 Q. And if you determined it was logical, you
 04 would do what?
 05 A. Another factor would be if the DM or RVP
 06 was -- or the -- the comments or the opinion of the
 07 field personnel, as to that. If I thought that was
 08 logical, there -- there was a good chance there
 09 would have been a discount that was -- that was very
 10 close if not equal to McNielus -- or excuse me --
 11 McClain, as in the situation we're talking about.
 12 Q. We covered that at your last deposition?
 13 A. Correct.

24. PAGE 150:01 TO 150:06 (RUNNING 00:00:20.400)

00150:01 Q. While they were still Mack National
02 Accounts?
03 A. I believe there, my practice would have
04 been to get some confirmation that, in fact, the
05 dealer was eligible and -- or wanted to be quoted by
06 McClain or McNielus or Heil.

25. PAGE 151:24 TO 152:14 (RUNNING 00:00:57.900)

24 Q. Is Exhibit-8 an e-mail that you sent to
00152:01 Mr. Flaherty and Mr. Nuss, which included pricing to
02 sell to McNielus for 2005 models?
03 A. I believe it is a -- it's an e-mail from
04 me, that is correct. It definitely is the
05 recommended price to sell to McNielus. Or a
06 recommend price, in this case, I guess, the Bob Nuss
07 group should sell to McNielus.
08 Q. And the related, did it not, to Mr. Nuss
09 actually selling to McNielus, rather than Mack
10 selling to McNielus?
11 A. I'm sorry. Can you repeat that?
12 Q. Was this a decision was made that the
13 McNielus account would be serviced and sold to by
14 Mr. Nuss, rather than Mack direct?

26. PAGE 152:16 TO 156:13 (RUNNING 00:04:22.100)

16 THE WITNESS: To my
17 understanding, McNielus designated the Bob
18 Nuss group to be the dealer that they
19 wanted to deal with after we had made the
20 decision we wanted it to transition back
21 through a dealer.
22 - - -
23 BY MR. MACK:
24 Q. And was this after that decision and
00153:01 designation was made?
02 A. I was not party to when an official
03 decision. I don't have it.
04 Q. This related, did it not, to pricing that
05 Mr. Nuss would charge to McNielus, not pricing that
06 Mack would charge to McNielus?
07 A. I am sorry? "This" is?
08 Q. The Exhibit-8?
09 A. Okay. Repeat the question, then.
10 Q. Yes. This related to pricing that
11 Mr. Nuss would charge to McNielus when he was
12 selling to them, not Mack selling direct to
13 McNielus?
14 A. I think that most important for Mack is --
15 Q. Can you answer my question, sir?
16 A. It was a recommended price. We have no
17 control over what Mr. Nuss could sell to McNielus.
18 Q. I am not trying to argue with you, sir. I
19 am trying to clarify that this was about Nuss
20 selling to McNielus, not Mack selling to McNielus.
21 We're in the time frame now
22 where Nuss is trying to sell to McNielus and Mack is
23 out of the direct sales business to McNielus. That
24 is all I am trying to clarify?
00154:01 A. That is what this is about, yes.
02 Q. And you want to emphasize that that was

03 just a recommended price, right?

04 A. Correct.

05 Q. Why do you want to you emphasis that?

06 Because I haven't ask you about that. Why do you
07 want to make that clear?

08 A. I thought the important point when I'm
09 looking at the exhibit is the exhibit establishes
10 the price we would expect to receive from the Nuss
11 group for the trucks, and that is what is important
12 to the Mack point of view.

13 Q. Also, it included a price that Mack was
14 recommending that Mr. Nuss sell to McNielus, right?

15 A. Exactly.

16 Q. And built into that price was a \$1,500
17 profit to Mr. Nuss, right?

18 A. That was a recommended number, yes.

19 Q. Okay. And \$750 additional floor plan
20 above the normal 15 days, right?

21 A. I don't know if you can make that direct
22 link.

23 Q. Okay. Why don't you read your e-mail that
24 you sent to Mr. Nuss. Right above your name. The
00155:01 last sentence?

02 A. Plus additional above the normal -- okay.
03 Above the normal 15 days plus \$700. Okay.

04 Q. So on normal deals to other dealers, they
05 got 15 days plus \$700 floor plan allowance from
06 Mack; is that right?

07 A. For a vocational model truck. For a
08 chassis that was designated as a truck, yes.

09 Q. Those were the terms that Mack was giving
10 to other dealers?

11 A. That's correct.

12 Q. Okay. And what you are saying here is
13 you're building into the price \$700 -- recommended
14 price, excuse me, \$750 additional floor plan?

15 A. That was a recommendation.

16 Q. Okay. And how did you come up with that
17 number?

18 A. I don't know if there was any -- it was a
19 round number.

20 Q. Well, a thousand is a round number, too.
21 Why not a thousand?

22 A. I picked \$750.

23 Q. Well, does at relate to the 120 day
24 payment terms that McNielus had been getting from
00156:01 Mack?

02 A. I could do the math. It may be close. It
03 may not.

04 Q. Well, did you do any math in coming up
05 with \$750 or did you just reach into a hat and pull
06 out a number?

07 A. I don't know if I got a calculator out.
08 But I probably made an assumption as to about where
09 that may be.

10 Q. Okay. And you made an assumption that 120
11 days invoicing was worth about \$750 in additional
12 floor planning?

13 A. Probably.

27. PAGE 157:12 TO 157:15 (RUNNING 00:00:07.400)

12 You understood, didn't you, that
13 McNiellus was expecting to receive from Mr. Nuss
14 similar payment terms that it had received from
15 Mack?

28. PAGE 157:18 TO 158:14 (RUNNING 00:00:49.000)

18 THE WITNESS: To be honest with
19 you, I don't know exactly what was
20 happening once we invoiced the chassis
21 from Mr. Nuss to McNiellus.

22 - - -

23 BY MR. MACK:

24 Q. Well, why did you put any amount in then
00158:01 for additional floor planning if you didn't have a
02 clue what was happening?

03 A. This was a recommendation.

04 Q. Okay. Why did you recommend that Mr. Nuss
05 build into his price \$750 for additional floor
06 planning, if you did not know what was happening on
07 the other end when Mr. Nuss billed McNiellus?

08 A. Because I was aware we did give 120 day
09 terms when we were invoicing to McNiellus as a
10 National Account.

11 Q. And you assumed that Mr. Nuss would have
12 to give something like that when he invoiced
13 McNiellus, right?

14 A. That was an assumption.

29. PAGE 159:10 TO 159:12 (RUNNING 00:00:14.100)

10 Q. You billed into your price a price
11 increase from the 2004 model?

12 A. Correct.

30. PAGE 160:01 TO 160:17 (RUNNING 00:01:06.500)

00160:01 Q. Are there any other customers or any other
02 dealers that you have ever given recommended pricing
03 to?

04 A. Any other dealers?

05 Q. Yes. That is the question. Dealers?

06 A. I would say yes.

07 Q. Okay. Tell me who?

08 A. There are -- there were dealer fleet -- I
09 will call them dealer fleet customers -- bigger
10 customers of -- that were being sold through the
11 dealer where we did have an agreement as to -- as to
12 what profit we would allow or we thought the dealer
13 should have in that deal. So, in effect, we were
14 giving a recommended selling price to the customer
15 or recommending a selling price to the customer.

16 Q. Why did you have an agreement with respect
17 to what profit the dealer would make on these deals?

31. PAGE 161:05 TO 161:08 (RUNNING 00:00:08.800)

05 Q. On those other bigger fleet deals, why did
06 you have an understanding with the dealer as to the
07 profit that Mack would allow him to have on those
08 deals?

32. PAGE 161:11 TO 161:21 (RUNNING 00:00:32.000)

11 THE WITNESS: There were certain
 12 situations where we because of the
 13 competitive nature and we did want -- we
 14 would prefer to have that customer, Mack
 15 Trucks, we did give some significant
 16 discounts where we were willing or had --
 17 or the math said we were going to take a
 18 very small gross profit or a gross margin
 19 loss, so we -- we tried to hold,
 20 therefore, the profit the dealer should
 21 have. It was recommended.

33. PAGE 166:03 TO 167:16 (RUNNING 00:02:49.000)

03 Q. Now, if the deal was between Mr. Nuss and
 04 McNielus, why were you at all involved in talking to
 05 Mr. Nuss about what his profit would be, what his
 06 floor plan allowance would be, or what actually he
 07 would -- you would recommend he would charge
 08 McNielus for those trucks?

09 A. I am guessing. I don't know why.

10 Q. You don't know why he did it?

11 A. I know Mr -- Bob Nuss probably wanted to
 12 confirm just all the various details of what was
 13 going to happen here, so he had need to call me. He
 14 wanted to make sure the invoicing to him would be
 15 correct.

16 Q. But why did you -- this has a lot more
 17 information than just what the products will be
 18 invoiced to him for, doesn't it?

19 A. Yes, it does.

20 Q. Why didn't you just stop there?

21 A. I don't know.

22 Q. Did anybody at the company ask you to
 23 perform an analysis of the recommended price for
 24 Mr. Nuss?

00167:01 A. No.

02 Q. Well, in Mr. Favia in an e-mail to you
 03 says, I think Bob needs to get him 05 pricing and I
 04 need to get him back the purchase orders with the 05
 05 pricing units billed after April 1, before he
 06 leaves.

07 Do you understand Mr. Favia to
 08 be asking you to provide Mr. Nuss with a recommended
 09 price?

10 A. I don't believe that part of the e-mail
 11 dealt with the recommended price.

12 Q. So this was just something that you came
 13 up with on your own as a favor to Mr. Nuss?

14 A. I don't know.

15 Q. You really don't know?

16 A. I don't know.

34. PAGE 170:04 TO 170:06 (RUNNING 00:00:20.133)

04 Q. I handed you a document we marked as
 05 Exhibit-9. Do you recognize the handwriting, sir?

06 A. That is mine.

35. PAGE 173:10 TO 173:13 (RUNNING 00:00:13.600)

10 Q. The dealer that sells to Heil, does he get
 11 the same discount as the dealer who sells to

12 McNielus?

13 A. Yes. The same discount percentage, yes.

36. PAGE 174:14 TO 175:13 (RUNNING 00:01:16.000)

14 Q. Then you list muni discount. Are these
15 discounts on municipal sales?

16 A. Correct.

17 Q. And you have central southwest listed,
18 right?

19 A. Correct.

20 Q. Are those central southwest regions?

21 A. Correct.

22 Q. And then you say, southeast and northeast,
23 no more than above possibly 1 percent less?

24 A. Correct.

00175:01 Q. Why are the discounts possibly 1 percent
02 less in the southeast and northeast region on sales
03 to municipal accounts?

04 A. Our experience has shown that due to
05 competitive forces, factors, that are in Mack's
06 favor, that this is Mack territory, quote, unquote,
07 we are able to acquire municipal business at
08 sometimes discounts less than what might be required
09 in the central or the southwest.

10 Q. Southeast and northeast are Mack's
11 territory, in quotes?

12 A. I believe the market share reports would
13 show that.

37. PAGE 188:02 TO 188:18 (RUNNING 00:00:59.000)

02 Q. So, we're back to Exhibit-10. And you
03 wanted to get some thoughts on paper for this
04 conference call about sales to McNielus, right?

05 A. That is correct.

06 Q. And what was going to be discussed at that
07 conference call that you felt it was important to
08 put your thoughts on paper because you couldn't be
09 there?

10 A. I believe the conference call was going to
11 deal with body builders, the issue of selling to
12 body builders.

13 Q. Well, the memo that you wrote talks about
14 McNielus, doesn't it? A price increase to McNielus?

15 A. That is correct.

16 Q. And, apparently, Mr. Flaherty was having a
17 meeting with McNielus on Tuesday to show our
18 displeasure at McNielus' recent sales tactics?

38. PAGE 189:04 TO 190:01 (RUNNING 00:01:11.000)

04 THE WITNESS: My understanding
05 was that was going to be one of many
06 issues.

07 - - -

08 BY MR. MACK:

09 Q. What sales tactics were you talking about
10 there?

11 A. It appeared that they were targeting
12 legacy or customer accounts who had traditionally in
13 the past so many buying cycles over the years had
14 purchased through the dealer, and McNielus was now
15 trying to quote them directly.

16 Q. And it was your belief that that flew in
17 the face of previous understandings with McNielus?

18 A. Based on e-mails I had seen from Joe Favia
19 or something, I thought it was a condition, yes.

20 Q. And you said fly in the face? I didn't
21 make that up, right?

22 A. No. I used that terminology.

23 Q. And you said previous understandings?

24 That was your terminology, right?

00190:01 A. That's what is written here.

39. PAGE 205:01 TO 205:17 (RUNNING 00:01:09.200)

00205:01 Q. This is an e-mail exchange between you and
02 Mr. Nuss?

03 A. That is correct.

04 Q. Exhibit-11?

05 A. Correct.

06 Q. We're now February 15 --

07 A. Okay.

08 Q. -- 2004.

09 And you were having an exchange
10 of e-mails with Mr. Nuss about the quoted price
11 given to McNielus, right?

12 A. I believe that is what this e-mail was
13 referring to was trying to make sure we had the
14 right price for the trucks already on order when
15 they were being treated as a National Accounts that
16 were going to be part of any transition to Bob Nuss
17 as the dealer.

40. PAGE 206:09 TO 206:11 (RUNNING 00:00:06.000)

09 Q. And he was working out with you what the
10 sales assistance would be and what profit he would
11 get, right?

41. PAGE 206:13 TO 206:19 (RUNNING 00:00:07.400)

13 THE WITNESS: I wouldn't agree
14 to the profit.

15 - - -

16 BY MR. MACK:

17 Q. Well, he says "Dealer margin came up
18 almost zero at 17 percent total sales assistance,"
19 doesn't he?

42. PAGE 207:10 TO 207:24 (RUNNING 00:00:36.100)

10 THE WITNESS: I believe the
11 price to McNielus for this group of trucks
12 because they had already been ordered as
13 National Accounts, was fixed and
14 predetermined. And this was -- this was
15 myself and Bob just making sure we had the
16 right discount that would back in to that
17 price that McNielus should be charged for
18 those trucks.

19 - - -

20 BY MR. MACK:

21 Q. And part of your discussion was how much
22 profit Mr. Nuss would get on those truck?

23 A. That would have definitely been a
24 component of this.

43. PAGE 216:10 TO 216:12 (RUNNING 00:00:10.000)

10 Q. Is this an e-mail that you sent to
11 Regional Vice President Flaherty, March 22nd, 2004?
12 A. That is correct.

44. PAGE 219:08 TO 220:19 (RUNNING 00:01:52.000)

08 Q. And then you said in the next to he last
09 paragraph, "I believe they need our MR units to keep
10 their factory and refuse sale business going." I
11 take it that was a belief that you had at that time?
12 A. I think that was the belief based off of
13 the last five or ten years of sales and the models
14 that they were purchasing in their annual sales.
15 Q. Well, why couldn't McNielus just stop
16 buying MRs from Mack and slid in some other
17 competitor and kept its factory and refuse sales
18 business going?

19 A. They could have, but --

20 Q. Well, you said "I believe they need our MR
21 units to keep their factory and refuse sales
22 business going"?

23 A. I was kind of hoping against hope that it
24 was that widely accepted, the SD/MR.

00220:01 Q. You used the word "believe." That wasn't
02 a hope against hope. That was something you
03 believed, wasn't it?

04 A. Yes. It was my personal belief.

05 Q. That if you didn't seal to MRs their
06 factory and refuse sales business was going to be
07 affected?

08 A. It was a personal belief, not based on any
09 fact, other than I noticed how many quantities of
10 MRs and LEs they had purchased in the past.

11 Q. Well, it was a personal belief that you
12 were making recommendations on -- based on,
13 regarding the pricing and discounts that Mack should
14 give to McNielus, right?

15 A. I believe my job was to make pricing
16 recommendations. But in this particular case, it
17 would not have been the -- it would not have been
18 the final decision from me. I was making
19 recommendations.

45. PAGE 255:11 TO 257:04 (RUNNING 00:02:51.000)

11 Q. I wanted to ask you, Mr. Polzer -- you are
12 welcome to look at all this. I wanted to ask you
13 about the second page in the e-mail that appears in
14 Exhibit-28 at the top of the second page, which
15 concludes "Steve."

16 A. Okay.

17 Q. That is an e-mail you sent, right?

18 A. Correct.

19 Q. Okay. And you sent it to Mr. Flaherty?

20 A. Yes, I did.

21 Q. And this is 2003. And it is talking about
22 McNielus pricing, right, and dealer discounts?

23 A. Talking about McNielus pricing. And you
24 are looking at point number one?

00256:01 Q. Yes.

02 A. Okay.

03 Q. I wanted to ask you what you meant when

04 you said, You will note the dealer equivalent
 05 discount on the CV model is quite significant and
 06 puts us in the that delicate -- and you put delicate
 07 in quotes -- position, of trying to hold normal
 08 discounting on dealer one to two truck deals where
 09 they claim they are competing against McNielus Mack
 10 units? What delicate position were you referring to
 11 there?

12 A. Of holding normal discount on a dealer one
 13 to two truck CV model.

14 Q. Where he caved in and was trying to get
 15 the McNielus discount because he claimed he was
 16 completing against McNielus?

17 A. I am sorry. Repeat that.

18 Q. Where the dealer came in and tried --
 19 wanted the McNielus CV discount because he claimed
 20 he was completing against McNielus?

21 A. Correct.

22 Q. And it was your goal to try to hold the
 23 normal discount, not give that dealer the CV
 24 discount given to McNielus, right?

00257:01 MR. HEEPS: Objection.

02 THE WITNESS: Yes. I believe my
 03 job was to, yes, get the highest price for
 04 the truck we could.

46. PAGE 274:14 TO 275:01 (RUNNING 00:00:43.000)

14 Q. Mr. Polzer, Exhibit-30, an e-mail from
 15 Mr. McCafferty, August 20, 2003, right?

16 A. That's correct.

17 Q. You were cc'd on it?

18 A. Yes, I was copied.

19 Q. Transport Service, that is a customer of
 20 Chicago Mack, right?

21 A. That is correct.

22 Q. And Mr. McCafferty is writing in this
 23 e-mail about accrual dollars. Do you see that?

24 A. Yes, I do.

00275:01 Q. What are accrual dollars?

47. PAGE 275:04 TO 277:09 (RUNNING 00:02:16.100)

04 THE WITNESS: I believe -- I
 05 believe these were trucks that had been --
 06 the referenced serial numbers were trucks
 07 that had been sold to Chicago Mack with
 08 trade-back residuals. I think we went
 09 through with what those had been in a
 10 previous -- and it is Mack policy that
 11 when we do allow residuals or make them
 12 part of the deal, we will accrue money for
 13 the back end, just in case the market
 14 value of that we will have to get to -- to
 15 take these trucks back and resell them
 16 won't be the amount of money that was
 17 committed to the customer.

18 - - -

19 BY MR. MACK:

20 Q. And at the end of the e-mail Mr.
 21 McCafferty says, "Information concerning this deal
 22 should not be shared with anyone outside of Kevin
 23 Flaherty or Steve Polzer." Do you see that?

24 A. Yes, I see that.
 00276:01 Q. Was this a secret deal?
 02 A. I don't know why he wrote that.
 03 Q. This was not a deal that was available as
 04 part of a program, right?
 05 A. As part of -- excuse me?
 06 Q. A program? Dogs Gone Wild?
 07 MR. HEEPS: Were these trucks
 08 purchased pursuant to some kind of
 09 program?
 10 MR. MACK: Sure.
 11 THE WITNESS: The trucks here.
 12 The trucks here or the --
 13 MR. HEEPS: Do you recognize the
 14 trucks that are listed on this page, one
 15 way or another, as having been --
 16 THE WITNESS: Transport Service
 17 would have not been a program type truck.
 18 It would have been specifically an ordered
 19 truck, at that time.
 20 - - -
 21 BY MR. MACK:
 22 Q. What is an over allowance on a residual?
 23 It's not in the memo. I am just asking if you ever
 24 heard that term?
 00277:01 A. Excuse me. What is?
 02 Q. An over allowance?
 03 A. Versus a residual? Is that the question?
 04 Q. Yes. Yes.
 05 A. An over allowance is -- to be honest, it's
 06 nothing different if you take your car in and you
 07 want to trade it in, you think it's worth 13. They
 08 are only -- they put an inventory for 10 but they
 09 give you 13.

48. PAGE 278:13 TO 278:17 (RUNNING 00:00:24.500)

13 Q. Well, let's see. Exhibit-31 is an
 14 exchange of e-mails with you, Mr. McCafferty,
 15 relating to Central Indiana Mack, right? Do you see
 16 down at the bottom of page one D534?
 17 A. I am sorry.

49. PAGE 278:19 TO 279:03 (RUNNING 00:00:27.000)

19 THE WITNESS: Okay. Yes.
 20 - - -
 21 BY MR. MACK:
 22 Q. Okay. And Mr. McCafferty in the e-mail at
 23 the top says, Steve, yes, asking for total net net
 24 billing on total discount approval, paren, which
 00279:01 would include OV dollars and volume bonus.
 02 A. Okay.
 03 Q. Was that approved by you?

50. PAGE 279:05 TO 279:15 (RUNNING 00:00:24.000)

05 THE WITNESS: If this is
 06 relating to that 42 unit trade out, which
 07 I believe it is, I recognize some of
 08 those. My guess is we would have tried to
 09 accommodate that, yes.
 10 - - -
 11 BY MR. MACK:

12 Q. What he was asking for there is that the
 13 over allowance on the trades actually be credited to
 14 the dealer upfront as part of the deal for net net
 15 billing?

51. PAGE 279:22 TO 280:03 (RUNNING 00:00:11.800)

22 Q. Do you see the reference to total discount
 23 approval including OV dollars?
 24 A. Yes.
 00280:01 Q. Okay. And volume bonus?
 02 A. And volume bonus.
 03 Q. What was he asking for?

52. PAGE 280:06 TO 281:07 (RUNNING 00:01:12.800)

06 THE WITNESS: This is a deal
 07 where we had agreed to replace the 42
 08 units that were in D534s MLS fleet with
 09 new units. And the difference between the
 10 agreed to price of the units that were
 11 coming off versus the new units created,
 12 it was a significant -- it was a large gap
 13 in those dollars, which would have
 14 included over allowance.
 15 And he -- and we had not yet
 16 invoiced the new units. So he was just
 17 saying, Okay, you are getting ready to
 18 invoice the new units that are part of
 19 these deals. Just include all the credits
 20 related to that were -- that agreed to the
 21 worksheet that --
 22 - - -
 23 BY MR. MACK:
 24 Q. Including over allowance dollars?
 00281:01 A. Correct.
 02 Q. That was done?
 03 A. I believe it was.
 04 Q. That wasn't part of any program that was
 05 available to all the dealers, was it?
 06 A. I believe this was a special situation
 07 that was approved by Kevin and Jeff.

53. PAGE 281:13 TO 283:19 (RUNNING 00:02:33.100)

13 Q. Exhibit-32 is an exchange e-mails from you
 14 and Mr. McCafferty regarding a sales of trucks to
 15 D534, right?
 16 A. Correct.
 17 Q. And the customer here was a customer by
 18 the name of Vitran?
 19 A. Vitran, correct.
 20 Q. Fleet customer?
 21 A. A dealer fleet. They -- they usually
 22 bought about a hundred trucks at a time, yes.
 23 Q. And there is a rather testee exchange here
 24 between you and Mr. McCafferty about how much sales
 00282:01 assistance the dealer should get?
 02 A. This was one of those deals that we would
 03 have worked from the back end price that was agreed
 04 to or that was required to sell to the customer up,
 05 which would have included how much profit we thought
 06 central Indiana should be allowed on this deal.
 07 And, yes, we had a disagreement as to what I thought

08 the sales assistance should be to agree to that from
09 the back -- I will say from the bottom up price and
10 how John got to that.

11 Q. And Mr. McCafferty made some comments
12 about pissing in your Cheerios and taking night shop
13 math classes, and few other not nice thing?

14 A. And I believe I wasn't as equally as nice,
15 going back, either.

16 Q. You are not quite as graphic?

17 A. No.

18 Q. Okay. How was this resolved?

19 A. I would have to look at the deal -- you
20 know, the deal file to see what the final --

21 Q. Page three?

22 A. Okay.

23 Q. There is an e-mail beginning "JMack"?

24 A. Okay.

00283:01 Q. "Estimating gross margin includes Mack
02 picking up extended warranty internally like last
03 deal." What does that mean?

04 A. This was a situation where there was going
05 to be an extended warranty on all of these trucks,
06 and the form would be sent in and we would put them
07 on our warranty, and we would internally record the
08 cost of that.

09 Q. So the dealer wasn't being charged for
10 that?

11 A. It was not part of the dealer sales
12 assistance.

13 Q. And this was a deal on this for this
14 particular customer, not a general program for all
15 the dealers, right?

16 A. We have done it on more than one occasion.

17 Q. But there is not a general program where
18 Mack does it?

19 A. There is not a general program.

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 00:49:45.033)